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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,266	06/26/2003	James E. Allard	MS164209.03	8120

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MICROSOFT CORPORATION
ONE MICROSOFT WAY
REDMOND, WA 98052

EXAMINER	
PINHEIRO, JASON PAUL	
ART UNIT	**PAPER NUMBER**
3714	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/609,266	ALLARD ET AL.	
	Examiner	Art Unit	
	JASON PINHEIRO	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03/18/2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *14,16-24,26-33,36 and 38-53* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *14,16-24,26-33,36 and 38-53* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *03/10/2008 and 07/15/2008*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. After the amendment filed on 03/18/2008, Claims 14, 22, 24, 32, 36 43, 45 and 52 were amended, claims 15, 25 and 37 were cancelled. As a result claims 14, 16-24, 26-33, 36 and 38-53 are pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 14, 16-24, 26-33, 36 and 38-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Ryzin (US 6393430) in view of Shih et al (US 2003/0227473).

Regarding claims 14 and 24: Van Ryzin discloses a method comprising obtaining an audio track from an audio source (Col. 5, Line 4); saving an identifier of the audio source on the storage device (Col. 4, Lines 11-24); and determining when an online service that provides a database containing meta data associated with the audio track is available, connecting to the online service, obtaining the meta data associated with the audio track from the database and storing the meta data associated with the audio track on the storage device, wherein the meta data is obtained from the online service based on at least in part on the identifier saved on the storage device (Col. 3, Lines 60-67; Col. 4, Lines 1-25; and Col. 5, Lines 25-50). Van Ryzin does not disclose implementing the method in a game console; saving the audio track on a storage device of the game console

so that a copy of the audio track is available when the audio source is no longer accessible to the game console, wherein the audio track is at least part of a user-created soundtrack; associating the user-created soundtrack with a game application; executing the game application on the game console; and during execution of the game application, playing the user-created soundtrack and displaying information regarding the soundtrack based on the meta data. However, Van Ryzin does teach saving the audio track so that a copy of the audio track is available when the audio source is no longer accessible to the PC, wherein the audio track is at least part of a user-created soundtrack (Col. 5, Lines 37-48), and Shih discloses that the audio source is accessible to a gaming platform such as PC or game consoles (paragraph [0025]). Shih also discloses associating the user-created soundtrack with a game application (paragraph [0024]); executing the game application on the game console (paragraph [0024]); and during execution of the game application, playing the user-created soundtrack and displaying information regarding the soundtrack based on the meta data (paragraph [0024]).

Therefore it would have been obvious to one skilled in the art at the time of the invention to save the audio track in the storage device of the game console of Shih in order to yield the predictable result of facilitating the incorporation of custom playlists into a video game.

Regarding claims 16-17, 26-27 and 41: Van Ryzin teaches storing the database on an internal hard disk drive (Col. 4, Lines 8-9).

Regarding claims 18, 28 and 38: Van Ryzin teaches saving an indicator of the audio track; and wherein the meta data is obtained based at least in part on both the saved identifier and the saved indicator on the storage device (Col. 4, Lines 9-45).

Regarding claims 19-20, 29-30 and 39-40: Van Ryzin teaches that the audio source comprises an audio CD (Col. 3, Lines 55-58).

Regarding claims 21-23, 31-33 and 42-44: Van Ryzin teaches including table of content information for the audio source (Col. 3, Lines 60-66; and Col. 4, Lines 1-25).

Regarding claims 36: Van Ryzin teaches using an identifier of the audio source to retrieve meta data associated with the audio track from a database if the database is accessible (Col. 4, Lines 1-7 and 39-40). Van Ryzin, further, teaches saving the identifier of the audio source if the database is not accessible (Col. 4, Lines 9-19 and 56-59).

4. Claims 45-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Ryzin (US 6393430) in view of Shih et al (US 2003/0227473) and further in view of Tony Hawk Pro Skater 2 for Playstation (Herein referred to as THPS2) (GameFAQ's).

Regarding claims 45: Van Ryzin discloses copying an audio track from an audio source (Col. 5, Line 4); using an identifier of the audio source (Col. 4, Lines 11-24); and determining when an online service that provides a database containing meta data associated with the audio track is available, connecting to the online service, obtaining the meta data associated with the audio track from the database and storing the meta data on the storage device associated with the audio track, wherein the meta data is obtained from the online service based on at least in part on the identifier saved on the storage device (Col. 3, Lines 60-67; Col. 4, Lines 1-25; and Col. 5, Lines 25-50); and using an

identifier of the audio source to retrieve meta data associated with the audio track from a database if the database is accessible (Col. 4, Lines 1-7 and 39-40). Van Ryzin, further, teaches saving the identifier of the audio source if the database is not accessible (Col. 4, Lines 9-19 and 56-59). Van Ryzin does not disclose implementing the method in a game console; saving the audio track so that a copy of the audio track is available when the audio source is no longer accessible to the game console, wherein the audio track is at least part of a user-created soundtrack; executing the game application on the game console. However, Van Ryzin does teach saving the audio track so that a copy of the audio track is available when the audio source is no longer accessible to the PC, wherein the audio track is at least part of a user-created soundtrack (Col. 5, Lines 37-48), and Shih discloses that the audio source is accessible to a gaming platform such as PC or game consoles (paragraph [0025]). Shih also discloses associating the user-created soundtrack with a game application (paragraph [0024]); executing the game application on the game console (paragraph [0024]). Neither Van Ryzin nor Shih disclose pausing execution of the game application in response to receiving a request to select a new soundtrack to playback during execution of the game application; and displaying information regarding the user-created soundtrack based on the meta data to assist a user in selecting the new soundtrack.

Therefore it would have been obvious to one skilled in the art at the time of the invention to save the audio track in the storage device of the game console of Shih in order to yield the predictable result of facilitating the incorporation of custom playlists into a video game.

THPS2 is a video game which is played on a gaming console (Playstation) in which players are able to, during the game, pause game-play and from a list which is supplied to the players of the available songs, select a new song to play during play of the game (GameFAQ's, Pg. 35)

Therefore it would have been obvious to utilize the selection during game play and the displaying of soundtrack information as disclosed by THPS2 in the combined invention of Van Ryzin and Shih in order to yield the predictable result of allowing players to select user-created soundtracks in addition to the game supplied soundtracks.

Regarding claim 47: Van Ryzin teaches saving an indicator of the audio track; and wherein the meta data is obtained based at least in part on both the saved identifier and the saved indicator on the storage device (Col. 4, Lines 9-45).

Regarding claims 48-50: Van Ryzin teaches that the audio source comprises an audio CD (Col. 3, Lines 55-58).

Regarding claims 51-53: Van Ryzin teaches including table of content information for the audio source (Col. 3, Lines 60-66; and Col. 4, Lines 1-25).

Regarding claims 45-46: Van Ryzin teaches using an identifier of the audio source to retrieve meta data associated with the audio track from a database over a network connection from an online service if the database is accessible (Col. 4, Lines 1-7 and 39-40). Van Ryzin, further, teaches saving the identifier of the audio source if the database is not accessible (Col. 4, Lines 9-19 and 56-59).

Response to Arguments

5. Applicant's arguments filed 03/18/2008 have been fully considered but they are not persuasive. Regarding Applicant's argument that Van Ryzin does not disclose obtaining metadata from an online service: Van Ryzin discloses that the metadata can be obtained from local media, such as a CD, or from music data files that are purchased electronically via the Internet (Col. 3, Lines 45-59). Although Van Ryzin only discloses the method of obtaining the metadata from the local media, Van Ryzin discloses that the user may obtain the tracks to be recorded from the Internet instead of from the CD (Col. 5, Lines 24-29).

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON PINHEIRO whose telephone number is (571)270-1350. The examiner can normally be reached on M - F 8:00 AM - 4 PM;.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. P./
Examiner, Art Unit 3714

/Robert E Pezzuto/
Supervisory Patent Examiner, Art Unit 3714